

## CHAPTER 4

### Monitoring the ETP

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<b>Monitoring</b> <b>4.1</b>	<p>Section 15250 of the California Vehicle Code allows DMV to delegate the driving test part of the commercial drive test to an Employer under specified conditions. The Commercial Motor Vehicle Safety Act of 1986, which nationally standardized the requirements, penalties, and sanctions for a commercial driver license, set forth the third party testing requirements and gave DMV the authority to monitor testing activities.</p> <p>DMV annually monitors Employers in the program, and may conduct random examinations, inspections, and audits without notice, during regular business hours (8:00 a.m. to 5:00 p.m. Monday thru Friday). Audits are conducted at the Employer's designated place of business where tests are administered and records are maintained and available for review. Audits are conducted in accordance with Generally Accepted Government Auditing Standards applicable to performance audits. As such, the auditor determines compliance with all provisions of an Employer's agreement with DMV. In addition to reviewing an Employers drive test practices, the auditor routinely reviews the following;</p> <ul style="list-style-type: none"> <li>• Drive test records</li> <li>• Training records</li> <li>• Employment records</li> <li>• Information regarding the drive test vehicles</li> <li>• Management controls</li> <li>• Documents processed by DMV</li> <li>• Examiner contract</li> </ul> <p>Employers are notified of annual audits approximately 3 weeks in advance of the review. An audit notification letter is sent to the Employer informing them of the audit date, location, and the names of the individuals that the auditor wishes to interview. Once an audit is completed, a report is issued to the Employer outlining the findings of the review. A copy of the audit report is also forwarded to the Employer Testing Program (ETP) Unit. Based on the findings noted, the ETP Unit may take actions against the Employers authority and/or the drivers certified.</p> <p>Common deficiencies that affect the status of the Employer's authority and the credence of the drivers certified are:</p> <ul style="list-style-type: none"> <li>• Pre-trip inspection.</li> <li>• Skills test.</li> <li>• Road test.</li> <li>• Drivers certified who are not employees.</li> <li>• Examiner is not licensed for the type of vehicle used in the road test.</li> </ul>
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<b>Sample Re-Testing 4.2</b>	<p>At the discretion of DMV, the Employer shall permit DMV to test a sample of drivers tested and certified by you, for the purpose of comparing pass/fail results between your examiners and DMV's examiners. The following provisions apply to DMV administered tests:</p> <ul style="list-style-type: none"> <li>• The selection of drivers to be retested by DMV will be determined by DMV.</li> <li>• You shall notify each certified driver of the possibility of being required to pass a DMV administered test.</li> <li>• DMV will notify you and the driver in writing of the selection for the DMV administered test.</li> <li>• You shall be held responsible for ensuring that the driver is available for a test on the date indicated by the department, unless the driver is no longer employed by you.</li> <li>• You shall submit a copy of the driver's drive test score sheets to DMV within 30 days of the written notice of the selection.</li> <li>• If you no longer employ the driver, you must notify DMV within 10 days of receipt of DMV's notice of selection for the DMV administered test. The score sheets for the driver still must be sent to DMV.</li> <li>• DMV will deem the Certificate of Driving Skill invalid if the driver does not return to DMV for the test, which will result in the driver license being downgraded to the previous class the driver possessed before certification.</li> <li>• DMV will conduct an investigation of any driver who fails the department administered test and may require a re-examination of the driver to retain the class of license issued through the Certificate of Driving Skill.</li> <li>• Any driver who fails the DMV administered re-examination, the department shall downgrade the license to the previous class that the driver possessed before certification.</li> </ul>
<b>Program Sanctions (Actions) 4.3</b>	<p>DMV reserves the right to take prompt remedial action against the Employer, and/or its certified drivers in the event they:</p> <ul style="list-style-type: none"> <li>• Fail to comply with State or Federal standards for commercial driver license testing (contained in the Federal Code of Regulations Title 49, Subparts E, G, H, Part 383).</li> <li>• Fail to comply with the Employer Testing Program provisions contained in the California Code of Regulations, Title 13, Article 2.1, §25.06 through §25.22, and Vehicle Code §12804.9(d) and §15250(c), (d).</li> </ul>

<b>Program Sanctions (Actions) (cont.)</b> <b>4.3</b>	<ul style="list-style-type: none"><li>• Commit a serious offense that affects public safety.</li><li>• Commit fraud or other criminal activity related to participation in the ETP.</li></ul> <p>Sanctions taken against the company range from a Warning Letter to Revocation. In addition to any program sanction implemented, DMV may refer cases of deliberate criminal activity to the appropriate court of competent jurisdiction for criminal prosecution.</p> <p>The department will provide a 15-day written notice to the Employer before suspending or revoking the Employer Number. However, DMV shall immediately suspend or revoke the Employer Number if an Employer is engaging in practices in such a manner that immediate suspension or revocation is required for the safety of persons on the highway. In reaching a decision on a disciplinary action, the Director of Motor Vehicles or his/her designee shall consider the guidelines entitled “Guidelines for Employer Testing Program Sanctions,” (rev. 9/2002) and any and all other sanctions provided by relevant statutes and regulations.</p> <p>In the event that the Employer Number is suspended, the Employer will be prohibited from conducting training, testing, and/or driver certification until verification is made that appropriate action(s) has been taken to correct deficiencies causing the suspension, and the time of the suspension has been completed, the Employer will be sent instructions on how to reinstate the Employer Number. DMV will send an Order of Reinstatement-Employer to the Employer when all requirements are met.</p> <p>A 15-day written notice will be given before the department takes any action against your authority. DMV will provide the Employer with instructions on what is required to reactivate their authority.</p> <p>If your Employer Number was revoked, and you have corrected the deficiency, which caused the revocation, you must submit an original Application, proof of correction of deficiencies, along with the appropriate documentation of your primary and alternate drive test routes. You must pay a non-refundable application fee for non-governmental Employers. A revocation will be for a 12-month period.</p>
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<b>Program Sanctions (Actions) (cont.)</b> <b>4.3</b>	<p>You and the driver will be provided with written notice when a DMV re-test is required of the driver. The driver must be re-tested or make an appointment with DMV for re-testing, within 30 days of the notice, or the driver license will be downgraded to the previous class of license that the driver possessed before commercial certification.</p> <p>Any action to appeal or review any order of the department canceling, suspending, or revoking an Employer Number shall be brought in a court of competent jurisdiction under §1085 of the Code of Civil Procedure, or as otherwise permitted by the laws of this state. The action shall be commenced within 90 days from the effective date of the order.</p>
<b>Authority Section for Sanctions</b> <b>4.4</b>	<p>Vehicle Code §15250(2)(d) states that the department may cancel, suspend, or revoke the agreement with a third-party tester if the third-party tester fails to comply with the standards for the commercial driver license testing program, or with any other term of the third-party agreement.</p> <p>Deviation from these guidelines is appropriate where the Director or his or her designee, in his or her sole discretion, determines that the facts of the particular case warrant such deviation, for example, the presence of mitigating factors, the age of the case, and evidentiary problems.</p>